

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT OTIS BURKE,	:	
Plaintiff,	:	
	:	
v.	:	No. 22-cv-3464
	:	
CHERYL STEBERGER, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this 16th day of February, 2023, upon consideration of Plaintiff Robert Otis Burke's Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 8) and Complaint (ECF No. 1), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. The Complaint is **DEEMED** filed.
3. Burke's official capacity claims against all Defendants, as well as his individual capacity claims against Defendants Warden Cheryl Steberger, Deputy Warden William Aberts, Major Lou Chirchello, Captain Thomas Jenkins as Defendants, and Institutional Investigator Hackler, are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for the reasons in the Court's Memorandum.
4. Burke's Fourteenth Amendment excessive force claims against Defendants E. Barr and Keith Mitchell, Corrections Officers at the Lancaster County Prisoner, brought in their individual capacity shall **PROCEED** to service.
5. The Clerk of Court shall issue summonses. Service of the summonses, the Complaint, this Order, and its accompanying Memorandum shall be made upon the Defendants E. Barr and Keith Mitchell, Corrections Officers at the Lancaster County Prisoner, by the U.S.

Marshals Service. Burke will be required to complete USM-285 forms so that the Marshals can serve Defendants Barr and Mitchell.¹ Failure to complete those forms may result in dismissal of this case.

6. All original pleadings and other papers submitted for consideration to the Court in this case are to be filed with the Clerk of Court. Copies of papers filed in this Court are to be served upon counsel for all other parties (or directly on any party acting *pro se*). Service may be made by mail. Proof that service has been made is provided by a certificate of service. The certificate of service should be filed in the case along with the original papers and should show the day and manner of service. An example of a certificate of service by mail follows:

“I, (name), do hereby certify that a true and correct copy of the foregoing (name of pleading or other paper) has been served upon (name(s) of person(s) served) by placing the same in the U.S. mail, properly addressed, this (day) of (month), (year).

(Signature)”

7. Any request for court action shall be set forth in a motion, properly filed and served. The parties shall file all motions, including proof of service upon opposing parties, with the Clerk of Court. The Federal Rules of Civil Procedure and Local Rules are to be followed. Burke is specifically directed to comply with Local Civil Rule 7.1 and serve and file a proper response to all motions within fourteen (14) days. Failure to do so may result in dismissal.

8. Burke is specifically directed to comply with Local Rule 26.1(f) which provides that “[n]o motion or other application pursuant to the Federal Rules of Civil Procedure governing discovery or pursuant to this rule shall be made unless it contains a certification of counsel that the parties, after reasonable effort, are unable to resolve the dispute.” Burke shall attempt to

¹ USM-285 forms may be accessed at <https://www.usmarshals.gov/process/usm285.htm>

resolve any discovery disputes by contacting Defendants' counsel directly by telephone or through correspondence.

9. No direct communication is to take place with the United States District Judge or United States Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk of Court.

10. In the event a summons is returned unexecuted, it is Burke's responsibility to ask the Clerk of Court to issue an alias summons and to provide the Clerk with the Defendant's correct address, so service can be made.

11. The parties should notify the Clerk's Office when there is an address change. Failure to do so could result in court orders or other information not being timely delivered, which could affect the parties' legal rights.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.

JOSEPH F. LEESON, JR.
United States District Judge